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13 14		TES DISTRICT COURT	
15	NORTHERN DISTRICT OF CALIFORNIA		
	OAKLAND DIVISION		
16 17	EPIC GAMES, INC.,	Case No. 4:20-cv-05640-YGR-TSH	
18	Plaintiff, Counter-defendant,	DECLARATION OF ETHAN DETTMER IN	
	v.	SUPPORT OF APPLE INC.'S ADMINISTRATIVE MOTION TO SEAL	
19 20	APPLE INC.,  Defendant, Counterclaimant.	DEPOSITION TESTIMONY IN SUPPORT OF APPLE INC.'S POSITION IN JOINT LETTER BRIEF REGARDING THE	
21		CLAWBACK OF DOCUMENTS	
22		Hon. Thomas S. Hixson	
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Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

- 1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. ("Apple") in this case. I am familiar with Apple's treatment of highly proprietary and confidential information, based on my personal experience representing Apple. I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto. I submit this declaration in support of Apple's Administrative Motion to Seal Deposition Testimony in Support of Apple Inc.'s Position in the Joint Letter Brief Regarding the Clawback of Documents, Dkt. 493.
- 2. The request for relief is narrowly tailored and necessary to the confidentiality of information described below.
- 3. In determining whether to permit documents to be filed under seal, courts in the Ninth Circuit apply two separate standards: (1) the "compelling reason" test for sealing information in connection with motions for a determination on the merits of a claim or defense; and (2) the less-restrictive "good cause" test for sealing information in connection with non-dispositive filings. Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006); Center for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause test applies, because the underlying dispute is non-dispositive.
- 4. Apple operates in an intensely competitive marketplace. It occupies a unique position as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate concerns that competitors will be quick to pounce on any release of Apple's highly sensitive, proprietary information in order to gain competitive advantage. As such, Apple takes extensive measures to protect the confidentiality of its proprietary information.

Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to Local Rule 79-5. See, e.g., In Re Qualcomm Litig., No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al., No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); Cisco Sys., Inc., et al. v. Opentv Inc., et al., No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple's safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

- 5. The Court has "broad latitude" "to prevent disclosure of materials for many types of information, including, *but not limited to*, . . . confidential . . . commercial information." *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original).
- 6. Here, Apple seeks to seal one part of one line of the deposition testimony excerpts cited in the Joint Letter Brief Regarding the Clawback of Documents, Dkt. 493, and its Notice of Supporting Documents regarding the same filed concurrently herewith.
- 7. Attached hereto as **Exhibit A** are the relevant excerpts of deposition testimony cited in the Joint Letter Brief Regarding the Clawback of Documents, Dkt. 493.
- 8. The deposition testimony to be sealed is limited to one part of one line, describing the number of developers that have signed up for the Small Business Program. If public, Apple's competitors could use that information to gain competitive advantage by giving them specific knowledge about the workings of an important business program.
- 9. The public disclosure of such information would cause Apple economic harm and put it at competitive disadvantage. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (finding there was a compelling reason for sealing when records contain business information that could be used to harm a litigant's competitive standing).
- 10. The information Apple seeks to protect is significant to its business, and Apple undertakes significant efforts to protect such information. Apple has narrowly tailored its sealing request so as to maximize the public's access to court records without jeopardizing Apple's business interests.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on April 27, 2021, at San Francisco, California.

/s/ Ethan Dettmer	
Ethan Dettmer	